IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

MONDAY, THE 6TH AUGUST 2007 / 15TH SRAVANA 1929

MACA.No. 1919 of 2005()

OPMV.10/2003 of MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPALAM

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APPELLANT/PETITIONER

K.T.UMMER,
S/O.AHAMMED, KONDOORKARANTHODI HOUSE,
KANAYAM.P.O, SHORNUR,
OTTAPPALAM TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.THOMAS ABRAHAM
SRI.K.B.ARUNKUMAR

RESPONDENTS:

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1. UNNIKRISHNAN @ MAMAN,
S/O.PARU AMMA, APPOZHATHU VEETTIL,
VADANAMKURUSSI, OTTAPPALAM TALUK,
(DRIVER OF KL-9/B-6432,
AUTORISHAW).

2. P.SIDDIK, S/O.ALAVI,
POONOTH HOUSE, KUZHUMURI, KOPPAM,
PATTAMBI, OTTAPPALAM TALUK, PALAKKAD DISTRICT,
(OWNER OF KL-9/B-6432, AUTORISHAW).

3. THE NEW INDIA ASSURANCE CO.LTD.,
BRANCH OFFICE, JRJ COMPLEX,
MAIN ROAD, OTTAPPALAM (INSURER OF KL-9/B-6432,
AUTORISHAW POLICY NO.3176110383562, VALID FROM
01.01.2002 TO 31.12.2002.

BY ADV. SRI.R.VENUGOPAL
SRI.R.SREEHARI
SRI.R.SREEHARI
SRI.N.S.MOHAMMED USMAN

THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD 06/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

M.A.C.A.No. 1919 OF 2005

Dated this the 6th August, 2007.

J U D G M E N T

The petitioner-applicant in O.P.(M.V.) No.10/2003, on the file of the Motor Accident Claims Tribunal, Ottappalam, is the appellant. This appeal is filed challenging the quantum of compenstion awarded by the Tribunal. The appellant met with a road traffic accident on 2.5.2002. He was riding a motor cycle bearing registration No.KL-9H/6251 from Kanayam to Vadanamkurussi. It was alleged that when he reached Kanayathparambu, an auto rickshaw bearing Registration No.KL-9B/6432, driven by the first respondent, in a rash or negligent manner, came from the opposite direction and hit against the motor cycle. Appellant fell down and sustained injuries. He filed Original Petitition impleading the owner, driver, as well as the insurer of the auto rickshaw. The first respondent filed a written statement denying the negligence alleged against him. It was contented that he was holding a valid driving licence. It was also contented that the vehicle was covered with a valid policy of insurance issued by the 3rd respondent. The 3rd respondent contented that there was no negligence on the part of the driver of the auto rickshaw. The

quantum of compensation claimed was disputed. It was admitted that the auto rickshaw was covered with a valid policy of insurance. The Tribunal found that the appellant sustained injuries in the accident. It was found that the driver of the auto rickshaw was negligent . But the Tribunal further found that the appellant also contributed to the accident, and he is 50% liable. The Tribunal found that the total compensation comes to Rs.29,010/=. Since, the appellant was also 50% responsible, he was entitled to claim only half of that amount. An award to that effect was also passed. Challenging the quantum of compensation, this appeal is filed.

2. The fact that the accident took place involving a motor cycle, which the appellant was riding and also the auto rickshaw bearing Registration No.KL-9B/6432, on 2.5.2002 is not disputed. The Tribunal found that the appellant is entitled to get a compensation of Rs.29,010/=, but awarded only half of it, on the basis of a finding that he was also negligent. In this case, a Commissioner was deputed, who prepared a rough sketch, showing the lie of the road. The sketch shows that at the place of accident, the road lies north-south, and there is a sharp curve. The appellant was riding the motor cycle from north to south. So, his correct side is eastern side of the road. The auto rickshaw was proceeding from south to north.

So, he would have kept to the western side of the road. The Tribunal found that there was a gutter on the western half of the road, where the accident took place, and on account of that gutter, no vehicle can be driven through the western side. That finding is not supported by any evidence. The Commissioner who was deputed to conduct a local inspection did not measure the depth of the gutter. It was stated that the accident occurred due to the gutter and it is having a width of half metres. It was further stated that as the gutter was filled with water, she could not measure out the depth of it.

3. I find it very difficult to accept the statement of the commissioner. So, the material on record shows that the auto rickshaw went to the wrong side and hit against the motor cycle. So the finding of the Tribunal that the appellant also contributed 50% of the accident is not supported by any material. So, that finding is vacated. I hold that the accident occurred due to the negligence of the first respondent alone. Since the vehicle is covered with a valid policy of insurance, the 3rd respondent is liable to pay the entire compensation amount. The Tribunal found that the appellant is entitled to get a compensation of Rs.29,010/=.

4. I have carefully gone through the compensation awarded under various heads. I do not find any reason to interfere with the quantum of compensation awarded. Hence, that is confirmed. But in view of my finding that the accident occurred due to the negligence of the first respondent, the appellant is entitled to get the entire compensation awarded by the Tribunal.

In the result, the appeal is allowed in part. The finding of the court below that the appellant also contributed to 50% of the accident is set aside. Appellant is entitled to get an amount of Rs.14,505/= as balance compensation, with interest at the rate of 6%, from the date of petition, till the date of realisation. The 3rd respondent is directed to deposit the said amount. On deposit, the appellant can withdraw the entire amount.

K.PADMANABHAN NAIR,
JUDGE

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